

## 21 C.J.S. Courts § 57

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### Courts

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## II. Jurisdiction of Courts

### D. Jurisdiction of Person

#### 4. Particular Circumstances or Actions Affecting Exercise of Personal Jurisdiction

§ 57. Torts as basis for personal jurisdiction—Tortious acts outside forum state

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Courts](#)  13.5(4) to 13.5(11)

**Under various statutes, a person committing a tortious act outside the state resulting in injury in the state is subject to personal jurisdiction by the state's courts with respect to a cause of action arising from the injury provided the person has certain other contacts with the state.**

Under various statutes, a person committing a tortious act outside the state resulting in injury in the state is subject to personal jurisdiction by the state's courts with respect to a cause of action arising from the injury.<sup>1</sup> For jurisdictional purposes, a party commits a tortious action "within the state" when the resulting injury occurs within the state even if the injury is the result of acts outside the state.<sup>2</sup>

Jurisdiction is not proper merely because the victim of a tort is a resident of the state,<sup>3</sup> or because an economic or other nonphysical loss occurs in the state,<sup>4</sup> but requires that the defendant's act

cause injury to a person or property within the forum state.<sup>5</sup> The situs of commercial injury is where the original critical events associated with the action or dispute took place not where any financial loss or damages occurred.<sup>6</sup>

The exercise of personal jurisdiction over a person committing a tortious act outside the state resulting in injury in the state generally requires that the person have certain contacts with the state,<sup>7</sup> consistent with Federal Due Process Clause minimum contacts and fundamental fairness standards for the imposition of personal jurisdiction,<sup>8</sup> including that the person derived substantial revenue from the activities, goods, or services;<sup>9</sup> that the person regularly did or solicited business or engaged in any other persistent course of conduct in the state;<sup>10</sup> or that the person expected, or reasonably should have expected, the act to have consequences in the state.<sup>11</sup>

The defendant need not be physically present in the forum state to cause injury in the forum state and thus engage in activity in the forum for purposes of contacts with the forum.<sup>12</sup> Telephonic, electronic, or written communications into the state may form the basis for personal jurisdiction if the alleged cause of action arises from the communications<sup>13</sup> although some courts have found the forum contacts insufficient under a transacting business statute for purposes of a tort action predicated solely on communications from outside the forum by e-mail, Internet websites, and telephone.<sup>14</sup>

Tortious acts by an out-of-state defendant resulting in injury or damage to a person or property in the forum state may be sufficient for the forum's exercise of specific personal jurisdiction over the defendant under the "stream of commerce" test.<sup>15</sup> For example, under the stream of commerce test, a foreign tire manufacturer had sufficient minimum contacts with the forum state for its exercise of specific personal jurisdiction in a products liability action when the manufacturer sold and shipped thousands of tires directly to its distributor, and the distributor shipped thousands of those tires for sale in the state even though the manufacturer did not directly sell or market the tires in the state.<sup>16</sup>

### ***Intentional torts.***

As to intentional torts committed by one outside the forum state, a defendant's tortious acts can serve as a source of personal jurisdiction only when the intentional conduct by the defendant creates the necessary contacts with the forum.<sup>17</sup> The plaintiff must make a prima facie showing that the defendant's acts: (1) were intentional; (2) were uniquely or expressly aimed at the forum state; and (3) caused harm, the brunt of which was suffered, and which the defendant knew was likely to be suffered, in the forum state.<sup>18</sup> In an intentional tort case, injury to a forum resident is not alone a sufficient connection for personal jurisdiction over a nonresident defendant.<sup>19</sup> When

defamatory statements regarding a forum state plaintiff are made outside the state yet with the purpose of causing injury to the forum state resident, and there is a reasonable expectation that the purposefully inflicted injury will occur in the forum state, the requirements of jurisdiction under the long-arm statute are satisfied.<sup>20</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The Local Injury; Foreign Act subsection of North Carolina's long-arm statute did not apply to North Carolina state court action arising from bus accident in France allegedly caused by tire that was manufactured and sold abroad, since both the act alleged to have caused injury, the fabrication of the allegedly defective tire, and its impact, the accident, occurred outside the forum. West's N.C.G.S.A. § 1-75.4(4)(b). *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011).

Courts construe tortious act provision of Florida long-arm statute broadly and apply it to defendants committing tortious acts outside the state that cause injury in Florida. Fla. Stat. Ann. § 48.193(1)(a)(2). *Anderson v. Talentsy, Inc.*, 599 F. Supp. 3d 1207 (M.D. Fla. 2022).

Out-of-state defendant who sent allegedly defamatory emails about physician was subject to Illinois's jurisdiction under long-arm statute provision covering commission of tortious acts within the state, where publication of defamatory statements occurred in Illinois, since email recipient received and read the emails in Illinois. U.S. Const. Amend. 14; Ill. Const. art. 1, § 2; 735 Ill. Comp. Stat. Ann. 5/2-209(a)(2). *Wesly v. National Hemophilia Foundation*, 2020 IL App (3d) 170569, 439 Ill. Dec. 481, 148 N.E.3d 221 (App. Ct. 3d Dist. 2020).

Trial court lacked personal jurisdiction over German vehicle manufacturer under New York's long-arm statute, in wrongful death action brought by executor of estate of driver of vehicle involved in fatal accident, alleging that driver lost control of vehicle due to allegedly defective ball joints and front lower control arms, since manufacturer did not manufacture subject vehicle or allegedly defective parts of subject vehicle, or sell subject vehicle to driver, and executor failed to establish that any activities conducted by manufacturer in New York had articulable nexus or substantial relationship to any recalls that were issued on allegedly defective parts of subject vehicle. McKinney's CPLR 302(a)(1). *Fernandez v. DaimlerChrysler, A.G.*, 143 A.D.3d 765, 40 N.Y.S.3d 128 (2d Dep't 2016).

No substantial connection existed between non-resident corporation's purposeful contact with Texas, in ordering farm equipment from a resident manufacturer for its farm supply retail stores,

and operative facts of negligence claim brought by widow and children of deceased truck driver stemming from driver's injuries and death while unloading truck of manufacturer's products at non resident corporation's facility, and therefore trial court lacked specific jurisdiction over non-resident corporation; widow's allegations of unsafe loading and inadequate safety training were not relevant considerations to non-resident corporation's contacts with the forum, manner and means of delivering goods was solely in control of resident logistics company, and non-resident corporation was third-party to the contract driver was performing at time of incident. [Wilco Farmers v. Carter](#), 558 S.W.3d 197 (Tex. App. Texarkana 2018).

While it was true that the parties would not have to litigate in a distant state if Washington courts asserted personal jurisdiction under long-arm statute over Idaho state trooper, who had followed driver from Idaho border into Washington, stopped the car, allegedly broke the driver's window, and dragged the driver from the car, the parties and the witnesses, all Idaho residents, would still have to litigate in a different state, and thus, relative convenience of the parties would be to try the case in Idaho. [West's RCWA 4.28.185. Pruczinski v. Ashby](#), 185 Wash. 2d 492, 374 P.3d 102 (2016).

## [END OF SUPPLEMENT]

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### Footnotes

- 1
  - U.S.—[Elandia Intern., Inc. v. Ah Koy](#), 690 F. Supp. 2d 1317 (S.D. Fla. 2010) (applying Florida law).
  - D.C.—[Etchebarne-Bourdin v. Radice](#), 982 A.2d 752 (D.C. 2009).
  - Kan.—[Midwest Mfg., Inc. v. Ausland](#), 47 Kan. App. 2d 221, 273 P.3d 804 (2012).
  - N.H.—[Kimball Union Academy v. Genovesi](#), 165 N.H. 132, 70 A.3d 435 (2013).
  - N.Y.—[Penguin Group \(USA\) Inc. v. American Buddha](#), 16 N.Y.3d 295, 921 N.Y.S.2d 171, 946 N.E.2d 159 (2011).
  - Ohio—[Kauffman Racing Equip., L.L.C. v. Roberts](#), 126 Ohio St. 3d 81, 2010-Ohio-2551, 930 N.E.2d 784 (2010).
  - Extraterritorial acts are within long-arm statute**
  - Mo.—[Bryant v. Smith Interior Design Group, Inc.](#), 310 S.W.3d 227 (Mo. 2010).
- 2
  - Kan.—[Midwest Mfg., Inc. v. Ausland](#), 47 Kan. App. 2d 221, 273 P.3d 804 (2012).
  - N.H.—[Kimball Union Academy v. Genovesi](#), 165 N.H. 132, 70 A.3d 435 (2013).
- 3
  - N.Y.—[Pichardo v. Zayas](#), 122 A.D.3d 699, 996 N.Y.S.2d 176 (2d Dep't 2014), leave to appeal denied, 26 N.Y.3d 905, 17 N.Y.S.3d 87, 38 N.E.3d 833 (2015).

- 4 N.Y.—*McBride v. KPMG Intern.*, 135 A.D.3d 576, 24 N.Y.S.3d 257 (1st Dep't 2016).
- 5 Mo.—*Noble v. Shawnee Gun Shop, Inc.*, 316 S.W.3d 364 (Mo. Ct. App. W.D. 2010).  
N.H.—*Kimball Union Academy v. Genovesi*, 165 N.H. 132, 70 A.3d 435 (2013).  
N.Y.—*Bluewaters Communications Holdings, LLC v. Ecclestone*, 122 A.D.3d 426, 996 N.Y.S.2d 232 (1st Dep't 2014).
- Physical or economic injury**  
Kan.—*Midwest Mfg., Inc. v. Ausland*, 47 Kan. App. 2d 221, 273 P.3d 804 (2012).
- Situs of injury test governs**  
N.Y.—*Magwitch, L.L.C. v. Pusser's Inc.*, 84 A.D.3d 529, 923 N.Y.S.2d 455 (1st Dep't 2011).
- 6 N.Y.—*McBride v. KPMG Intern.*, 135 A.D.3d 576, 24 N.Y.S.3d 257 (1st Dep't 2016).
- 7 D.C.—*Etchebarne-Bourdin v. Radice*, 982 A.2d 752 (D.C. 2009).  
Kan.—*Midwest Mfg., Inc. v. Ausland*, 47 Kan. App. 2d 221, 273 P.3d 804 (2012).  
N.H.—*Kimball Union Academy v. Genovesi*, 165 N.H. 132, 70 A.3d 435 (2013).  
N.Y.—*Waggaman v. Arauzo*, 117 A.D.3d 724, 985 N.Y.S.2d 281 (2d Dep't 2014), leave to appeal denied, 24 N.Y.3d 903, 995 N.Y.S.2d 711, 20 N.E.3d 657 (2014).  
Tex.—*Lisitsa v. Flit*, 419 S.W.3d 672 (Tex. App. Houston 14th Dist. 2013), review denied, (Jan. 30, 2015).
- 8 U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014).  
N.Y.—*Penguin Group (USA) Inc. v. American Buddha*, 16 N.Y.3d 295, 921 N.Y.S.2d 171, 946 N.E.2d 159 (2011).
- 9 D.C.—*Etchebarne-Bourdin v. Radice*, 982 A.2d 752 (D.C. 2009).  
Ga.—*Innovative Clinical & Consulting Services, LLC v. First Nat. Bank of Ames*, 279 Ga. 672, 620 S.E.2d 352 (2005).  
N.Y.—*Waggaman v. Arauzo*, 117 A.D.3d 724, 985 N.Y.S.2d 281 (2d Dep't 2014), leave to appeal denied, 24 N.Y.3d 903, 995 N.Y.S.2d 711, 20 N.E.3d 657 (2014).
- 10 D.C.—*Etchebarne-Bourdin v. Radice*, 982 A.2d 752 (D.C. 2009).  
Ga.—*Innovative Clinical & Consulting Services, LLC v. First Nat. Bank of Ames*, 279 Ga. 672, 620 S.E.2d 352 (2005).
- 11 D.C.—*Etchebarne-Bourdin v. Radice*, 982 A.2d 752 (D.C. 2009).  
N.Y.—*Muse Collections, Inc. v. Carissima Bijoux, Inc.*, 86 A.D.3d 631, 927 N.Y.S.2d 389 (2d Dep't 2011).  
Ohio—*Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St. 3d 81, 2010-Ohio-2551, 930 N.E.2d 784 (2010).
- 12 N.H.—*Kimball Union Academy v. Genovesi*, 165 N.H. 132, 70 A.3d 435 (2013).
- 13 Fla.—*Kingland Estates, Ltd. v. Davis*, 170 So. 3d 825 (Fla. 3d DCA 2015).

**Long-distance phone calls and e-mails**

U.S.—*Sledge v. Indico System Resources, Inc.*, 68 F. Supp. 3d 834 (W.D. Tenn. 2014) (applying Tennessee law).

**A.L.R. Library**

In personam jurisdiction, in libel and slander action, over nonresident who mailed allegedly defamatory letter from outside state, 83 A.L.R.4th 1006.

14 Iowa—*Capital Promotions, L.L.C. v. Don King Productions, Inc.*, 756 N.W.2d 828 (Iowa 2008).

N.Y.—*Whitcraft v. Runyon*, 123 A.D.3d 811, 999 N.Y.S.2d 124 (2d Dep't 2014).

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16 Iowa—*Book v. Doublestar Dongfeng Tyre Co., Ltd.*, 860 N.W.2d 576 (Iowa 2015).

17 U.S.—*Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014).

18 Neb.—*Abdouch v. Lopez*, 285 Neb. 718, 829 N.W.2d 662 (2013).

19 Mont.—*Tackett v. Duncan*, 2014 MT 253, 376 Mont. 348, 334 P.3d 920 (2014).

20 Ohio—*Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St. 3d 81, 2010-Ohio-2551, 930 N.E.2d 784 (2010).

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